

<sup>3</sup> Counsel did not appeal a March 25, 2021 OWCP merit decision, which denied appellant's claim for a schedule award. As counsel did not appeal from that decision, it is not presently before the Board. *See* 20 C.F.R. § 501.3.

Federal Employees' Compensation Act<sup>4</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.

### **ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

### **FACTUAL HISTORY**

This case has previously been before the Board.<sup>5</sup> The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On January 8, 2016 appellant, then a 55-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a hand condition causally related to factors of her federal employment, including repeated trauma caused by casing and carrying mail. OWCP accepted the claim for right hand synovitis and tenosynovitis, and primary osteoarthritis of the right hand.<sup>6</sup> It paid appellant wage-loss compensation on the supplemental rolls effective October 29, 2016, and on the periodic rolls effective, April 2, 2017.

By decision dated October 3, 2019, OWCP terminated appellant's entitlement to wage-loss compensation and schedule award benefits, effective October 3, 2019, based on her refusal of suitable work, pursuant to 5 U.S.C. § 8106(c)(2). It explained that Dr. Michael A. Steingart, OWCP's second opinion physician, an osteopathic physician specializing in sports medicine provided a well-reasoned opinion as to appellant's current work limitations and the employing establishment had offered her a job within those restrictions.

On October 14, 2019 appellant requested reconsideration of the October 3, 2019 decision. She resubmitted medical evidence previously of record, including a November 9, 2017 narrative report and a November 5, 2017 work capacity evaluation (Form OWCP-5c) from Dr. John R. Klein, a Board-certified orthopedic surgeon.

On December 13, 2019 OWCP thereafter received a copy of a July 9, 2019 report from Dr. Amit Sahasrabudhe, a Board-certified orthopedic surgeon. This report was previously received by OWCP on October 1, 2019 but was not reviewed in OWCP's decision dated October 3, 2019.<sup>7</sup>

---

<sup>4</sup> 5 U.S.C. § 8101 *et seq.*

<sup>5</sup> Docket No. 20-0676 (issued May 6, 2021).

<sup>6</sup> Appellant was diagnosed with a concurrent nonindustrial injury to include a degenerative full-thickness central perforation tear of the triangular fibrocartilage articular disc (TFCC) and had a right wrist arthroscopy with TFCC debridement on January 3, 2017.

<sup>7</sup> Also on December 13, 2019, OWCP issued a final overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$1,028.45, for which she was at fault, for the period October 3 through 12, 2019 as she continued to receive wage-loss compensation following the termination of her benefits.

In a progress report dated December 20, 2019, Dr. Mark A. Braunstein, a Board-certified orthopedic surgeon, related that appellant was seen in follow-up after a right wrist arthroscopic procedure. He related that appellant had returned to work and was experiencing wrist pain when working with a scanner. Dr. Braunstein concluded that appellant was doing well, with continued pain on the ulnar side of her right wrist.<sup>8</sup>

Appellant appealed to the Board on February 6, 2020.

OWCP subsequently received copies of medical reports previously of record, including March 28 and November 5, and 9, 2017 reports from Dr. Klein, a May 4, 2018 report from Dr. Braunstein, and the July 9, 2019 report from Dr. Sahasrabudhe. It also received a February 7, 2020 work status form, bearing an illegible signature, which indicated that appellant could return to work on February 8, 2020.

Counsel also forwarded to OWCP a July 8, 2020 permanent impairment evaluation report from Dr. Mesfin Seyoum, a family medicine specialist. In a report dated September 16, 2020, Dr. Nathan Hammel, a Board-certified orthopedic surgeon acting as an OWCP medical adviser, reviewed the record including Dr. Seyoum's July 8, 2020 permanent impairment report.

On March 25, 2021 OWCP received duplicate copies of reports from Dr. Klein dated November 5, 2017, and reports of Dr. Steingart dated November 13, 2018 and April 15, 2019, previously of record.<sup>9</sup>

By decision dated May 6, 2021, the Board affirmed the October 3, 2019 termination decision, finding that OWCP met its burden of proof to terminate appellant's wage-loss compensation and entitlement to schedule award benefits, effective October 3, 2019, as she refused an offer of suitable work pursuant to 5 U.S.C. § 8106(c)(2).<sup>10</sup>

On May 14, 2021 appellant, through counsel, requested reconsideration of the October 3, 2019 termination decision.

By decision dated June 1, 2021, OWCP denied appellant's May 14, 2021 request for reconsideration of the merits of her claim.

### **LEGAL PRECEDENT**

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.<sup>11</sup> OWCP has discretionary authority in this regard and has imposed certain

---

<sup>8</sup> On February 11, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

<sup>9</sup> Also on March 25, 2021 OWCP denied appellant's February 11, 2020 schedule award claim. *See supra* note 3.

<sup>10</sup> The Board also affirmed in part and reversed in part the December 13, 2019 overpayment determination. *Supra* note 5.

<sup>11</sup> This section provides in pertinent part: The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

limitations in exercising its authority.<sup>12</sup> One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.<sup>13</sup>

Upon receipt of a timely application, OWCP exercises its discretion in accordance with the guidelines set forth in section 10.606(b)(3) of the implementing federal regulations, which provides that a claimant may obtain review of the merits of his or her written request for reconsideration, including all supporting documents, sets forth arguments and contain evidence which either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>14</sup> Section 10.608(b) provides that any request for reconsideration of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.<sup>15</sup>

### ANALYSIS

The Board finds that the case is not in posture for decision.

Following the October 3, 2019 OWCP decision which terminated appellant's compensation benefits for refusal of suitable work, OWCP continued to receive additional medical evidence, including a December 20, 2019 progress report by Dr. Braunstein and a February 7, 2020 work status form. However, it did not review or address this evidence in the June 1, 2021 decision.<sup>16</sup>

In the case of *William A. Couch*,<sup>17</sup> the Board held that, when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. While OWCP is not required to list every piece of evidence submitted to the record, there is no indication that OWCP reviewed any of the medical evidence submitted after the October 3, 2019 decision.<sup>18</sup>

As the Board's decisions are final with regard to the subject matter appealed,<sup>19</sup> it is crucial that all evidence relevant to the subject matter of the claim, which was properly submitted to

---

<sup>12</sup> 20 C.F.R. § 10.607.

<sup>13</sup> See *J.R.*, *supra* note 2; *C.C.*, Docket No. 18-0316 (issued March 14, 2019); *id.* at § 10.607(a).

<sup>14</sup> *Id.* at § 10.606(b)(3).

<sup>15</sup> *Id.* at § 10.608(b). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

<sup>16</sup> See *D.B.*, Docket No. 21-0693 (issued November 9, 2021).

<sup>17</sup> 41 ECAB 548 (1990); see also *R.D.*, Docket No. 17-1818 (issued April 3, 2018).

<sup>18</sup> See *T.G.*, Docket No. 19-1930 (issued January 8, 2021).

<sup>19</sup> See 20 C.F.R. § 501.6(d).

OWCP prior to the time of issuance of its final decision be reviewed and addressed by OWCP.<sup>20</sup> Because OWCP failed to consider all of the medical evidence submitted by appellant, the Board cannot review such evidence for the first time on appeal.<sup>21</sup>

For this reason, the case will be remanded to OWCP to properly consider all of the evidence of record.<sup>22</sup> Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.<sup>23</sup>

### **CONCLUSION**

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

---

<sup>20</sup> See *S.K.*, Docket No. 18-0478 (issued January 2, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); see also *William A. Couch*, *supra* note 17.

<sup>21</sup> 20 C.F.R. § 501.2(c)(1). See also *G.M.*, Docket No. 16-1766 (issued February 16, 2017).

<sup>22</sup> See *M.J.*, Docket No. 18-0605 (issued April 12, 2019).

<sup>23</sup> *B.N.*, Docket No. 17-0787 (issued July 6, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 1, 2021 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 1, 2022  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board